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**IN THE  
COURT OF APPEALS OF INDIANA**

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JONNIE NAPIER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0611-CR-1042

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Israel Cruz, Judge  
Cause No. 49F10-0608-CM-146701

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**August 14, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Jonnie Lee Napier (“Napier”) appeals from his conviction, after a bench trial, of public intoxication, as a class B misdemeanor.

We affirm.

## ISSUE

Whether sufficient evidence exists to support Napier’s conviction.

## FACTS

On August 8, 2006, at approximately 1:40 p.m., Officer Jack Tindall (“Officer Tindall”) of the Indianapolis Police Department received a radio dispatch regarding an intoxicated person around the 3700 block of East 10<sup>th</sup> Street. When Officer Tindall arrived at the scene, he observed a disheveled Napier standing in the street with fire department personnel. When Officer Tindall approached, Napier explained that he lived nearby. As Napier spoke, Officer Tindall observed the odor of alcohol emanating from Napier’s person and also noted Napier’s slurred speech, bloodshot eyes, and unsteady balance. Based on his training and experience, Officer Tindall concluded that Napier was intoxicated and started to place him under arrest.

Napier’s mother arrived on scene as Officer Tindall was arresting Napier. She advised Officer Tindall that Napier could come to her home, located fifty to seventy-five yards away at 3625 East 10<sup>th</sup> Street. Officer Tindall agreed, assisted Napier to the porch, and instructed him to remain there. Officer Tindall and the fire crew then left the scene.

Approximately twenty minutes later, at 2:00 p.m., Officer Tindall received a radio dispatch again directing him to the 3700 block of East 10<sup>th</sup> Street, this time regarding a

person lying in a yard. When Officer Tindall returned, he encountered the same fire crew and observed Napier lying on the front lawn of 3705 East 10<sup>th</sup> Street. Since Officer Tindall's departure, Napier had left his mother's porch, crossed the street and walked down the sidewalk before collapsing on his girlfriend's front lawn. Officer Tindall arrested Napier and, later that day, the State charged Napier with public intoxication, as a class B misdemeanor. Napier's bench trial was held on October 17, 2006.

At trial, the defense objected to the State's attempts to introduce evidence of Officer Tindall's initial "run" to the scene, arguing that the original run constituted a separate incident and, therefore, was an inadmissible prior bad act. Thus, the defense argued, the State could not prove that Napier had been intoxicated in a public place because, on the subsequent run, Officer Tindall had encountered Napier in his girlfriend's yard, which was not a public place. The trial court disagreed and found that the two runs were part of a single incident occurring on the same date, at the same location, and involving the same individual, and deemed the evidence admissible.

Napier took the stand and testified that his first encounter with Officer Tindall occurred, not in the street, but on the sidewalk in front of his mother's home. Seizing upon Napier's testimony, the trial court found that the State had proved beyond a reasonable doubt that Napier was intoxicated in a public place – either the street or the public sidewalk. Napier now appeals.

### DECISION

Napier argues that insufficient evidence exists to support his conviction. He challenges the trial court's finding that he was intoxicated in a public place. Our standard

of review when considering the sufficiency of the evidence is well settled. *Jones v. State*, 857 N.E.2d 450, 453 (Ind. Ct. App. 2006). We will not reweigh the evidence or assess the credibility of witnesses. *Id.* Rather, we consider only the evidence that supports the verdict and draw all reasonable inferences from that evidence. *Id.* We will uphold a conviction if there is substantial evidence of probative value from which a jury could have found the defendant guilty beyond a reasonable doubt. *Id.*

To convict Napier of public intoxication, the State had the burden of proving that Napier was in public place while in a state of intoxication. *See* Ind. Code § 7.1-5-1-3. A public place is “a place open to common and general use, participation and enjoyment; a place accessible to the public.” *Wright v. State*, 772 N.E.2d 449, 455 (Ind. Ct. App. 2002).

Officer Tinder testified that when he initially encountered Napier, Napier was standing in East 10th Street. Napier testified that he was, in fact, standing on the public sidewalk in front of his mother’s house. In either event, Napier was in a public place because public sidewalks and streets are certainly public places for purposes of Indiana Code section 7.1-5-1-3. *Price v. State*, 600 N.E.2d 103, 115 (Ind. Ct. App. 1992), *aff’d in relevant part*, 622 N.E.2d 954 (Ind. 1993). Officer Tinder determined that Napier was intoxicated because of his unsteady balance, slurred speech, bloodshot eyes, and the odor of alcohol emanating from his person. Based on the foregoing, we find that there was sufficient evidence to support Napier’s conviction for public intoxication.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.